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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/655,143
INVENTOR : Beverly A. Rzigalinski et al.
Filed : 09/04/2003
Title : CERIUM OXIDE NANOPARTICLES AND USE IN ENHANCING CELL
SURVIVABILITY
TC/A.U. : 1617
Examiner : Kendra D Carter
Atty. Dkt. No. : UCF-375 Confirmation No.: 6531

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Via Facsimile to: (571) 273-8300


Honorable Commissioner:

I enclose the following papers:

1. Election Response (3 pages)

Please enter the above correspondence.

Respectfully submitted,

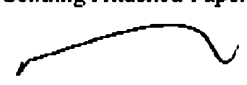

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CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.6(d))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being sent by facsimile to the: Commissioner of Patents and Trademarks at fax phone (571) 273-8300.

2/12/07
Date

Brian S. Steinberger
(Name of Person Sending Attached Papers)


(Signature of Person Sending Attached Papers)

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ELECTION

Sir:

In response to the Examiner's Office Action mailed January 17, 2007, Applicant elects to prosecute with traverse, Invention II, Claim 2, drawn to a method for enhancing the longevity of living cells comprising: adding nonagglomerated, ultra fine, engineered nanoparticles of cerium oxide to cultures of living cells, classified in class 514, subclass 769.

This election is made based on the restriction requirement that requires Applicant to elect from the following inventions:

- I. Claim 1 drawn to a nonagglomerated, ultra fine, engineered cerium oxide nanoparticle...
- II. Claim 2 drawn to a method for enhancing the longevity of living cells (the elected invention).
- III. Claims 3 and 4, drawn to a method for promoting wound healing...
- IV. Claims 5, 6, 11, and 12, drawn to a method for treating arthritis and joint diseases...
- V. Claims 7, 8, 11 and 12, drawn to a method for treating vascular diseases...
- VI. Claims 9 and 10, drawn to an anti-aging treatment....

- VII. Claims 13 and 14, drawn to a method for treating inflammation...
- VIII. Claim 15 drawn to a composition comprising nonagglomerated, ultrafine, engineered nano particles of cerium oxide
- IX. Claims 16 – 21, drawn to a method for preparing nonagglomerated, ultrafine, engineered nano particles of cerium oxide with high biological activity...
- X. Claim 22, drawn to surgical implants or dressings coated with an effective amount of cerium oxide nano particles...

Applicant agrees there are separate inventions; however, Applicant disagrees with the restriction requirement for several reasons.

A policy consideration behind a restriction requirement would suggest that separate inventions exist that inherently would include separate prior art searches, examinations, examiners, and the like. The examiner has not stated that separate examiners are necessary to examine each of these inventions. In fact, the examiner admits six (6) inventions, namely, Invention II, III, IV, V, VI and IX are searchable and classified in the same class 514, and two (2) inventions, (Invention I and VIII) are searchable in the same class 424.

On pages 4-38 of the Office Action mailed January 17, 2007, the Examiner argues that the restriction between individual products and the process of use claims is proper or argues that certain inventions, such as, VI and VII or VI and IX are directed to unrelated methods or are unrelated inventions, respectively.

On page 39 of the Office Action, the Examiner discusses Rejoinder; if Applicant elects claims directed to a product, and a product claim is subsequently found allowable, the withdrawn process claims related to the product may depend from the allowable product claim will be rejoined in accordance with MPEP § 821.04.

Applicant has elected one of the process of use claims, the remaining product claims and process claims will be withdrawn and Applicant reserves the right to file divisional applications directed thereto.

Although Applicant reserves the right to file divisional applications, Applicant further objects to the multiple examinations of these inventions as repetitive and excessive. If the product Inventions can be searched within the same art unit and further by the same examiner, in the same class 424, then having different examiners conduct separate searches and examinations would create an undue time and financial burden on both the U.S. Patent Office and Applicant. Likewise, with the process of use inventions, if the inventions can be searched within the same art unit, by the same examiner, in the same class 514, such an examination would alleviate repetitive and excessive examinations.

Reconsideration of the restriction requirement is respectfully requested.


Please note that an election has been made, with traverse, to Invention II. Claim 2, drawn to a method for enhancing the longevity of living cells comprising: adding nonagglomerated, ultra fine, engineered nanoparticles of cerium oxide to cultures of living cells, classified in class 514, subclass 769.

Although an election has been made, Applicant respectfully requests reconsideration and a re-grouping of claims into fewer than ten inventions, namely, product and process of use.

Respectfully submitted:

Date: 2/12/07

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